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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-sixth session
Agenda item 10 (b)

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Mr. Decaux: draft resolution

1994/... Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983, in which the Commission requested the Sub-Commission to propose measures designed to ensure respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, prohibiting derogation from certain rights, even in time of public emergency,

Recalling also the following resolutions it has adopted on this question: 10 (XXX), 1983/28, 1983/30, 1985/32, 1987/25, 1988/24, 1989/28, 1990/19, 1991/18, 1992/22 and 1993/28,

Having taken note of the seventh revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur, Mr. Leandro Despouy (E/CN.4/Sub.2/1994/23),

Bearing in mind that, in its resolution 1991/34 of 5 March 1991, the Commission on Human Rights invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergencies and to formulate suggestions thereon,

Recalling that it requested the Special Rapporteur to make recommendations on the impact of emergency measures on non-derogable rights, and noting with satisfaction that in May 1994 he organized, for this purpose, an international expert meeting for an initial study process that deserves to be further explored,

1. Takes note with interest of the seventh annual revised report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur (E/CN.4/Sub.2/1994/23) and notes with satisfaction that the Rapporteur is increasingly enjoying active cooperation from States, as well as competent bodies of the United Nations, the specialized agencies, non-governmental organizations and competent university institutes;

2. Notes with concern that, as apparent from the seventh report, dated 3 June, since 1 January 1985 a state of emergency has been proclaimed, extended or maintained in various forms on 196 occasions in States and territories, whereas in that same period, it has been terminated only 59 times;

3. Invites all States whose legislation does not contain any explicit provision guaranteeing the legality of the introduction of a state of emergency to adopt provisions in conformity with international rules and principles, as developed in the successive reports of the Special Rapporteur and endorsed by the Commission on Human Rights, and similarly invites States whose legislation explicitly provides for states of emergency to ensure that such legislation is in conformity with international rules on the matter;

4. Notes the increasing interest shown by States in receiving technical assistance concerning states of emergency and the rights which can not be derogated from in such circumstances, and expresses the hope that the Secretary-General will be able to respond promptly and effectively to requests from States in the context of advisory services in the field of human rights and through the Special Rapporteur;

5. Urges Governments, particularly those facing situations of internal unrest, to limit resort to a state of emergency exclusively to circumstances whose seriousness and exceptional character are such that they justify the introduction of such an emergency, and to combine such introduction with guarantees (notably with regard to proportionality, duration and the inalienability of non-derogable rights) intended to maintain respect for human rights, so as to prevent a state of emergency from becoming commonplace and from being unjustifiably perpetuated;

6. Notes with deep concern that, to deal with certain situations, including internal unrest or the threat of such unrest, some States do not hesitate to take emergency measures without officially proclaiming a state of emergency, and that such measures have serious repercussions on the enjoyment of human rights, and invites all States to ensure that no emergency measures, including suspension or limitation of certain basic rights, is taken without the corresponding state of emergency being officially proclaimed, in accordance with national law and international rules and principles;

7. Takes note with interest of the consultations entered into by the Special Rapporteur to devise principles to be followed for drafting legal provisions on states of emergency (March 1991) and to study non-derogable rights in states or situations of emergency (May 1994), encourages the Rapporteur to organize, in May 1995 in Geneva, a second expert meeting on the question of non-derogable rights to explore the matter further, and requests him to report on the results of the meeting at its forty-seventh session, in the context of his eighth report;

8. Also requests the Special Rapporteur to submit at that same session an updated list of States which have proclaimed, extended or terminated a state of emergency since 1 January 1985, so that, at its fifty-first session, the Commission on Human Rights will have the latest and most comprehensive possible information on the past 10 years;

9. Takes note of the consultations with institutions and experts already held by the Special Rapporteur in implementation of resolution 1993/28 on the subject of receiving, storing and retrieving information, through a databank, on states of emergency and related human rights questions, and invites him to pursue

and broaden such consultations in early 1995 so as to report on the results at its forty-seventh session;

10. Requests the Secretary-General to place at the disposal of the Special Rapporteur all the human and material resources needed to carry out his mandate in accordance with the foregoing;

11. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Endorsing Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/..., dated ... August 1994,

Recommends the following draft resolution to the Economic and Social Council for adoption:

The Economic and Social Council,

Recalling Commission on Human Rights, resolution 1995/..., dated ... 1995 and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/..., dated ... August 1994, entitled "Question of human rights and states of emergency",

1. Approves the Sub-Commission's requests made to the Special Rapporteur on the question of human rights and states of emergency to fulfil his mandate, notably those relating to the holding of an expert meeting (i) to study non-derogable rights in states or situations of emergency and to international principles to be taken into account in drafting national legal rules, and (ii) to establish a data on states of emergency and related human rights questions,

2. Requests the Secretary-General to place at the disposal of the Special Rapporteur the human and material resources needed to fulfil his mandate in accordance with the foregoing.